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IN THE
Supreme Court of the United States

October Term 1976

No. 76-322

GENE SLAGLE, INC., ET AL.,
Petitioners,

vs.

GENERAL TELEPHONE COMPANY OF OHIO
and
THE PUBLIC UTILITIES COMMISSION
OF OHIO,
Respondents.

**BRIEF IN SUPPORT OF WRIT OF CERTIORARI
TO THE SUPREME COURT OF THE
STATE OF OHIO**

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Now comes the Public Utilities Commission of Ohio (Respondent Commission) by its Counsel William J. Brown, Attorney General of Ohio, and supports the Petition of Gene Slagle, Inc. (Petitioner) for a writ of certiorari to review the judgment of the Ohio Supreme Court in the case of *General Telephone Co. v. Pub. Util. Comm.* (1976), 46 Ohio St. 2d 124. Since Respondent Commission supports the Petition it is filing this Brief pursuant to U.S. Sup. Ct. Rule 21(4), 28 U.S.C. This filing has been made as promptly as possible as required by said rule.

STATEMENT OF THE CASE

While the Respondent Commission does not disagree with the accuracy of the procedural history outlined in Petitioner's Statement of the Case, it would add the following facts.

The Petitioner noted that in *General Telephone Co. v. Pub. Util. Comm.* (1972), 30 Ohio St. 2d 271 the Ohio Supreme Court remanded a rate order to Respondent Commission for compliance with the statutory provision requiring Respondent Commission to set forth reasons for its decision in sufficient detail. (Ohio Revised Code, Section 4903.09) Respondent Commission complied with that mandate by issuing an opinion and order on September 29, 1972. Said opinion and order authorized the same rates which had been previously granted. However, the Commission explained its decision in greater detail.

Furthermore, Petitioner noted that it urged certain distinctions between *Gene Slagle, Inc., v. Pub. Util. Comm.* (1975), 41 Ohio St. 2d 44, *cert. denied* 423 U.S. 877 (1975) and *Cleveland Elec. Illuminating Co. v. Pub. Util. Comm.* (1976), 46 Ohio St. 2d 105 when the latter case was argued before the Ohio Supreme Court. Respondent Commission would note that in its view, no meaningful distinctions existed between the two cases.

REASONS FOR GRANTING THE WRIT

While the decision of the Ohio Supreme Court, which is the subject of the Petition, reversed an order of Respondent Commission, Respondent Commission is in agreement with the result reached by the Ohio Supreme Court. As reflected by the Petitioner's Statement of the Case, that order of Respondent Commis-

sion, which was reversed, was issued in compliance with a previous decision of the Ohio Supreme Court in which the Court had reversed Respondent Commission's initial order. *Gene Slagle, Inc., supra*. Therefore, when the Ohio Supreme Court in *Cleveland Elec. Illuminating Co., supra*, reversed its decision in *Gene Slagle, Inc., supra*, and applied that reversal in *General Telephone Co. v. Pub. Util. Comm.* (1976), 46 Ohio St. 2d 124, it adopted the arguments originally presented by Respondent Commission. Nonetheless, Respondent Commission believes that the opinion of the Ohio Supreme Court in *General Telephone Co.* (1976), *supra*, may have such a significant impact on utility regulation, that it would be appropriate for this Court to review that opinion.

Although Respondent Commission agrees with the Ohio Supreme Court's recent decision in *General Telephone Co.* (1976), *supra*, regarding effectiveness of rates authorized by an order of the Commission which is subsequently reversed, Petitioner argues that to require a customer to pay rates authorized by an order which has been reversed for being contrary to state law deprives those customers of property without due process of law in violation of the Fourteenth Amendment of the United States Constitution.

This apparently presents a question of a substantial Federal nature. The Ohio Supreme Court's decision in *General Telephone Co.* (1976), *supra*, draws into question the right to due process under the Fourteenth Amendment of the United States Constitution of Ohio's public utilities' customers. Whether that decision would be applicable in jurisdictions other than Ohio, Respondent Commission cannot say. However, future decisions of the Ohio Supreme Court on appeals from

rate orders of Respondent Commission will be subject to the effect of the decision in *General Telephone Co.* (1976), *supra*. Because this decision will have continuing effect at least within Ohio and because its effect raises a question of constitutional infirmity, Respondent Commission believes that the Petition should be granted. Respondent Commission believes that despite its agreement with the opinion of the Ohio Supreme Court, it should not thwart an attempt to obtain review of that opinion where constitutional infirmity might exist.

Respondent Commission has not, in this Brief, addressed the merits of issues raised by Petitioner. Rather, this Brief is limited to reasons why Respondent Commission believes this Court should grant the Petition before it. Should this Court grant the Petition and review the decision of the Ohio Supreme Court, Respondent Commission will fully participate and will at that time address itself to the merits of the case.

CONCLUSION

Respondent Commission supports the Petition for a writ of certiorari to review the judgment of the Supreme Court of Ohio in the case of *General Telephone Co. v. Pub. Util. Comm.* (1976), 46 Ohio St. 2d 124 and respectfully urges this Court to grant such Petition.

Respectfully submitted,

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